No. 1371

IN THE

UNITED STATES

Circuit Court of Appeals

FOR THE NINTH DISTRICT

HERBERT STRAIN, Appellant,

vs

H. B. PALMER, Receiver,
BENJAMIN GRAHAM, Trustee,
THE AMERICAN FREEHOLD LAND MORTGAGE COMPANY OF LONDON, ENGLAND, LIMITED, H. H. NELSON SHEEP COMPANY, H. H. NELSON AND JAMES T. STANFORD, Appellees.

APPELLANT'S REPLY BRIEF.

A. C. GORMLEY,
W. T. PIGOTT,
Solicitors and Counsel for Appellant.

Husbandman Job Print Great Falls, Montana.

No. 1371

IN THE

UNITED STATES

Circuit Court of Appeals

FOR THE NINTH DISTRICT

HERBERT STRAIN, Appellant,

vs

H. B. PALMER, Receiver,
BENJAMIN GRAHAM, Trustee,
THE AMERICAN FREEHOLD LAND MORTGAGE COMPANY OF LONDON, ENGLAND, LIMITED, H. H. NELSON SHEEP COMPANY, H. H. NELSON AND JAMES T. STANFORD, Appellees.

APPELLANT'S REPLY BRIEF.

A. C. GORMLEY,
W. T. PIGOTT,
Solicitors and Counsel for Appellant.

Husbandman Job Print Great Falls, Montana.

IN THE

UNITED STATES

Circuit Court of Appeals

FOR THE NINTH DISTRICT

HERBERT STRAIN, Appellant,

vs

H. B. PALMER, Receiver,
BENJAMIN GRAHAM, Trustee,
THE AMERICAN FREEHOLD LAND MORTGAGE COMPANY OF LONDON, ENGLAND, LIMITED, H. H. NELSON SHEEP COMPANY, H. H. NELSON AND JAMES T. STANFORD, Appellees.

APPELLANT'S REPLY BRIEF.

Appellees suggest on page two of their brief that the order of February 26, 1906, (Record 66), denying the petition pro interesse suo is "clearly a final order from which an appeal might have been taken. This order finally disposed of the claim as presented by the petition, and the subsequent order dated May 31st is of no consequence." The so-called "subsequent order" is the final decision or decree of May 28, 1906, as amended by the final decision

or decree of May 31, 1906, entered nunc pro tunc as of the former date. (Rec. 74-76). This final decision and decree, among other things, denied and refused the petition, and finally dismissed the proceedings by way of the petition. (Rec. 76).

The suggestion made by the Appellees is that, since the order of February 26, 1906, merely denying the petition, is not appealed from, it finally disposed of the claim as presented by the petition, and "the subsequent order," dated May 31, is not of moment.

We answer the suggestion of Appellees by calling attention to the fact that under Section 6 of the Act Establishing the Circuit Courts of Appeals, this Court may exercise appellate jurisdiction from final decisions only of district and circuit courts, except in interlocutory orders or decrees with respect to injunctions or receivers. The order of February 26 was a mere denial of the petition, and in no wise was a final decision or decree. That order left the proceeding still pending in the Circuit Court, and not until the order of May 31, entered nunc pro tunc as of May 28, was there a final decision. The order of February 26 was not appealable; the final decision and decree of May 28 is appealable.

Our position is manifestly sustained by the reason of the thing, and by an unbroken line of cases, a few of which we venture to cite:

Robinson v. Belt, 5 C. C. A. 521;

Potter v. Beal, 2 C. C. A. 60;

Trust Co. v. Madden, 17 C. C. A. 238;

Bissell Carpet-Sweeper Co. v. Goshen Sweeper Co., 19 C. C. A. 25;

Trust Co. v. Sullivan, 23 C. C. A. 458;

Jones v. Sands, 25 C. C. A. 233;

Ries v. Henderson, 24 C. C. A. 194;

Latta v. Kilbourn, 150 U. S. 524.

The appeal from the order of May 28 raises, and presents to this court, all the errors assigned by Appellant, and these include the denial of the petition..

A. C. GORMLEY,

W. T. PIGOTT,

Solicitors and Counsel for Appellant.